

**FINAL REPORT
OF THE
COMMISSION ON COURTS**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November, 2004

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2004

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Commission on Courts

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**Judge Ernest Yelton
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Legislative Services Agency Staff

**Mark Goodpaster, Fiscal Analyst
Timothy Tyler, Attorney**

November 1, 2004

FINAL REPORT

Commission on Courts

I. STATUTORY DIRECTIVE

IC 33-1-15-7 charges the Commission on Courts with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts. A request for review under this subdivision must be received by the commission not later than July 1 of each year. A request received after July 1 may not be considered unless a majority of the commission members agrees to consider the request.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The commission shall hold at least one (1) public hearing on each request presented to the commission.
4. Review and report on any other matters relating to court administration that the commission determines appropriate, including the following:
 - a. Court fees.
 - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - d. Jury selection.
 - e. Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
 - a. A recommendation on all requests considered by the commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - b. If the commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - i. A draft of legislation implementing the changes.
 - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
 - iii. Summaries of any research supporting the recommended changes.

- iv. Summaries of public hearings held concerning the recommended changes.
- c. A recommendation on any issues considered by the commission under subdivision (4).

As added by P.L.98-2004, SEC.2.

II. SUMMARY OF WORK PROGRAM

The Commission met three times during the interim to study court-related issues.

On August 11, 2004, the Commission heard testimony on the following topics:

1. An update of the Judicial Technology and Automation Project by Justice Frank Sullivan.
2. A review of the Commission's budget.
3. A review of previous recommendations.
4. A staff report on court fees.

On September 8, 2004, the Commission met and heard testimony on the following topics:

1. The 2003 Weighted Caseload Statistical Report by Ron Miller, Office of State Court Administration.
2. A reexamination of the need for new courts or magistrates in Vigo, Howard, Hamilton, DeKalb, Madison, Perry, and Owen counties based on the 2003 Weighted Caseload Study.
3. The need for additional judicial officers in Boone, Hendricks and Monroe Counties.
4. The need for a senior judge in the Indiana Tax Court.
5. Changes in restriction on state employment of retired judges receiving payments from the Judges Retirement Fund.
6. The recommendations made by the Public Officers Compensation Advisory Commission concerning judicial salaries.

The Commission met on October 8, 2004, and heard testimony on the following topics:

1. The costs of certified mail in court actions.
2. Changes in bankruptcy exemption levels.
3. Increasing the per diem rates of senior judges.
4. Expanding the potential pool in counties by including registered voters.
5. A proposal by the Delaware Circuit Courts for a magistrate.
6. A staff report on court fees currently in statute.
7. A staff report on the fiscal implications of traffic infractions disposed in city and town courts.

8. The Commission approved the final report by a 10 to 0 vote.

III. SUMMARY OF TESTIMONY

Requests for New Courts or Judicial Officers

Boone County: Circuit Court Judge Steven Dale told the Commission members that he requested a new magistrate for his court. Representative Jeff Thompson asked the Commission to recommend a magistrate for the Boone Circuit Court.

Hendricks County: The following persons testified for the need for additional courts in Hendricks County:

- Senator Connie Lawson
- Judge Karen Love, Hendricks Superior Court #3
- Judge David Coleman, Hendricks Superior Court #2
- Judge Robert Freese, Hendricks Superior Court #1
- Nancy Marshall, Hendricks County Auditor
- Rep. Jeff Thompson
- Patricia Ann Baldwin, Hendricks County Prosecuting Attorney

Monroe County: Rep. Eric Koch introduced the judges from Monroe County who proposed new courts. Judge Randy Bridges described the reasons supporting Monroe County's need for additional courts.

Delaware County: Senator Allie Craycraft introduced Delaware Circuit Court Judge Wayne Lennington who testified to the Commission about Delaware County's need for a new magistrate.

2003 Weighted Caseload Statistical Report

Ron Miller (Director of Trial Court Management for the Division of State Court Administration) explained how the staff of the Division of State Court Administration used additional data when updating the Weighted Caseload Statistical Report with 2003 data.

Judicial Salaries

Marc Kellams, President of the Indiana Judges Association and Judge of Monroe Circuit Court Division 2, described the salary schedules that the Public Officers Compensation Advisory Commission recommended during the 2004 interim.

Costs of Certified Mail

The Commission members reviewed HB 1302-2004, which would increase the current certified mailing fee for civil and small claims cases from the current \$5 to \$10. The Commission members

recommended language that would address the problems for increasing costs of certified mail by requiring parties requesting notification by certified mail pay the additional costs. The Commission also requested Rep. Richardson to develop the language to address this problem.

Changes in Bankruptcy Law

Elliot Levin and Thomas Allington, representing the Indiana State Bar Association Bankruptcy & Creditors' Rights Section, presented a written proposal to add new assets that a person filing for personal bankruptcy may protect from creditors and to double the dollar amount of exempted assets that an individual filing for bankruptcy may protect from creditors. Sonja Kriegsmann, representing the Indiana Bankers Association, also testified.

Increasing the Per Diem of Senior Judges

Chief Justice Randall Shepard spoke to the Commission about the need to increase the per diem rates paid to senior judges.

Expanding the Jury Pool

Chief Justice Randall Shepard discussed the need to expand the jury pools in counties.

Staff Reports

Mark Goodpaster presented two staff reports to the Commission on Courts concerning a survey of fees charged by courts and the fiscal implications of traffic infractions that are disposed in city and town courts.

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission recommended additional courts and ranked them in terms of priority on the basis of the 2003 Weighted Caseload Study:

Priority	County	2003 Need	2003 Have	2003 Utiliza- tion	State- wide Rank	Recommended New Judicial Officers	New Utiliza- tion	New Statewide Rank
1	Howard	8.71	4.3	2.03	1	One new court	1.64	3
2	Hendricks*	6.78	4	1.7	4	Two new courts	1.13	48
3	Perry	1.68	1	1.68	5	One new court	0.84	77
4	Jackson	4.31	2.6	1.66	6	One new court	1.20	39
5	Dearborn	3.81	2.4	1.59	8	One new court	1.12	51
6	DeKalb	3.47	2.2	1.58	9	One new court	1.08	55
7	Monroe	10.42	7	1.49	13	Two new courts	1.16	44
8	Vigo	8.85	6	1.48	14	One new court	1.26	27
9	Hamilton	12	8.7	1.38	23	One new court	1.24	32
10	Madison	10.97	8.14	1.35	27	One magistrate	1.20	40

* For Hendricks County, a new magistrate would be appointed in 2005, which would be converted into Hendricks Superior Court #4 in 2007. Also in 2007, Hendricks Superior Court #5 will be created.

Besides the additional courts and magistrates, the Commission also recommended the following:

1. Allow the Judge of the Indiana Tax Court to Appoint a Senior Judge – Under current law, every court of record in Indiana may appoint senior judges to assist with caseload except for the State Tax Court. The Commission recommends a bill be introduced during the 2005 General Assembly to allow the judge of the State Tax Court to appoint a senior judge to assist with judicial workloads.
2. Convert the Montgomery County Court into a Montgomery Superior Court – County courts have certain restrictions on the types of cases that can be filed in that court. IC 33-3-30-4-2 prohibits county courts from hearing cases involving: (1) actions seeking injunctive relief or involving partition of real estate; (2) actions to declare or enforce any lien; (3) matters pertaining to paternity, juvenile, or probate; (4) cases where the appointment of a receiver is asked; and (5) suits for dissolution of marriage. Concerning felony cases, a county court is restricted to conducting preliminary hearings. Converting the Montgomery County Court into a Montgomery Superior Court could assist in distributing the caseload in the county more equitably.
3. Salaries of Judicial Officers – The General Assembly should consider the one-time change in judicial salaries proposed by the Public Officers Compensation Advisory Commission during the 2004 interim shown in the following table.

<u>Public Officer</u>	<u>Last Salary Increase</u>	<u>Salary Levels</u>		
		<u>Current</u>	<u>Maximum</u>	<u>Recommended</u>
Supreme Court Justice	August 1, 1997	\$115,000	\$154,767	\$143,195
Court of Appeals Judge	August 1, 1997	\$110,000	\$148,030	\$139,951
Tax Court Judge	August 1, 1997	\$110,000	\$148,030	\$139,951
Trial Judge*	August 1, 1997	\$90,000	\$121,122	\$121,122
* Because the salaries of magistrates, juvenile court magistrates, prosecuting attorneys, and deputy prosecuting attorneys are linked by statute to the salaries of trial court judges, their salaries would increase as well if no other changes are made to the statute.				

4. Remove Restrictions on Retired Judges Who Receive Judges Retirement Fund Payments – Under current law, retired judges receiving payments from the Judges Retirement Fund are restricted to working as senior judges if they wish to continue being state employees and also receive Judges Retirement Fund payments. Consequently, retired judges cannot work in the office of the county's prosecuting attorney, in a public defender's office, teach in a public university, or run for elected office in some capacity and continue to receive payments from the Judges Retirement Fund.
5. Address the Costs of Notifications by Certified Mail – The county share of civil filing fees is \$27 (\$100 x 27%), and its share of small claims costs fee is \$9.45 (\$35 x 27%). The costs of notifying defendants in civil and small claims actions is almost \$5 per mailing by certified mail. If more than one defendant is named in a civil or small claims action and if more than one notification is sent to each defendant, the cost of notification by certified mail could exceed the revenue the county receives from the filing fee. The Commission recommends that parties filing civil and small claims actions pay for the costs when notification sent to defendants about a civil or small claims action is sent through certified mail.
6. Change the Bankruptcy Statute Concerning Protected Assets – The statute governing the types

of assets that are protected from creditors in bankruptcy cases has not been changed since 1980. Consequently, the dollar value of these assets has been significantly eroded by inflation. In addition, certain types of financial assets, such as Roth IRAs, did not exist before 1980 and are not specifically protected in the statute. The Commission recommends new language to include certain monetary assets currently not specified in statute to be protected assets when filing for bankruptcy and increase the dollar value of assets that individuals filing for bankruptcy may protect from creditors.

7. Expand Jury Pools – Two statewide databases of adults that courts use for selecting jury pools include those maintained by the Department of Revenue and the Bureau of Motor Vehicles. The Commission recommends legislation that would also allow the Indiana Supreme Court to expand jury pools by using statewide voting records, including date of birth of registered voters.
8. Increase the Per Diem Rates for Senior Judges – The Commission recommends that the maximum amount for a senior judge be increased from \$100 to \$200 to increase the incentive for retired judges to work as senior judges in counties with a large number of pending cases.

W I T N E S S L I S T

Chief Justice Randall Shepard

Justice Frank Sullivan

Ron Miller, Director of Trial Court Management, Division of State Court Administration

Marc Kellams, President of the Indiana Judges Association

Representative Jeff Thompson

Judge Steven Dale Boone Circuit Court

Senator Connie Lawson

Judge Karen Love, Hendricks Superior Court #3

Judge David Coleman, Hendricks Superior Court #2

Judge Robert Freese, Hendricks Superior Court #1

Nancy Marshall, Hendricks County Auditor

Patricia Ann Baldwin, Hendricks County Prosecuting Attorney

Representative Eric Koch

Judge Randy Bridges, Monroe Circuit Court

Senator Allie Craycraft

Judge Wayne Lennington, Delaware Circuit Court #5

Elliot Levin, Rubin & Levin, P.C.

Thomas Allington, Professor of Law, Indiana University School of Law

Sonja Kriegsmann, Bussell and Kriegsmann, Attorneys representing the Indiana Bankers Association